REMARKS

Claims 1, 14, 29, 41 and 44 have been amended. Claims 1-44 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Objection under 37 CFR 1.75(c):

The Examiner objected to claims 28, 40, and 42 under 37 CFR 1.75(c), as allegedly being "of improper dependent form for failing to further limit the subject matter of a previous claim." Applicant respectfully asserts that the claim format is proper. Each dependent claim does further limit the respective independent claim by reciting a **different statutory class**. In other word, the independent claim is not limited to the statutory class of the dependent claim. Thus, contrary to the Examiner's assertion, the dependent claims do in fact "further limit the subject matter of a previous claim." **According to M.P.E.P. 608.01(n)(III), a dependent claim may be in a different statutory class than the independent claim from which it depends.** *See* M.P.E.P. 608.01(n)(III), which states, "The fact that the independent and dependent claims are in different statutory classes does not, in itself, render the latter improper." **If this objection is maintained, Applicant requests that the Examiner explain why the above-quoted portion of M.P.E.P. 608.01(n)(III) does not apply.** Accordingly, Applicant respectfully requests withdrawal of this objection.

Section 103(a) Rejection:

The Examiner rejected claims 1-44 under 35 U.S.C. § 103(a) as allegedly unpatentable over Lustig et al. (U.S. Publication 2002/0002531) (hereinafter "Lustig") in view of Seymour et al. (U.S. Patent 6,871,190) (hereinafter "Seymour"). Applicant respectfully traverses this rejection for at least the reasons given below.

In regard to claim 1, the cited art fails to teach or suggest *receiving information indicating one or more default standards for a purchaser, wherein said default standards specify product or service characteristics that are preferred by said purchaser, and subsequent to said receiving, detecting an issuance of a commitment to purchase, by said purchaser, said product or service according to initial terms of sale.*

The Examiner asserts, "Lustig teaches each offer includes at least two parameters: identified the product, price, quality, delivery time; for example, Offer 1 (original offer) includes product ID, price 1 good quality … Thus, the 'Offer 1 (original offer) includes product ID, price 1, good quality', is equivalent to '*default standards specify product or service characteristics that are preferred by said purchaser*'." (Office Action, March 02, 2010, Response to Arguments, pp. 2-3) The Examiner further cites paragraphs [0070] – [0073] of Lustig and asserts, "note that the original offer and the selected indicator submitted by the user is considered equivalent to the default standard for a purchaser in the claimed invention." (Office Action, March 02, 2010, p. 6) The Examiner appears to equate Lustig's user selection of an original offer, which includes parameters such as price and quality, to receiving information indicating default standards for a purchaser which specify product or service characteristics that are preferred by said purchaser, as recited in Applicant's claim.

Lustig's selection of an original offer does not teach receiving information indicating default standards for a purchaser (which specify product or service characteristics that are preferred by said purchaser) in the manner recited in Applicant's claim. Applicant's claim draws a clear **distinction** between *receiving information indicating default standards for a purchaser* **and** *detecting an issuance of a commitment to purchase*. Applicant's claim recites ***subsequent to*** *said receiving information indicating default standards for a purchaser, detecting an issuance of a commitment to purchase*. Thus, Lustig's user selection of an original offer is **not** the same as receiving information indicating default standards for a purchaser, as recited in Applicant's claim. Lustig clearly does not disclose receiving information indicating default standards **and, subsequent to said receiving**, detect an issuance of a commitment to purchase. Lustig

merely describes a user selecting an original offer. Lustig does not receive any information indicating default standards for a purchaser that is **distinct** from the user selection of the original offer. Accordingly, Lustig cannot be said to teach or suggest *receiving information indicating one or more default standards for a purchaser, wherein said default standards specify product or service characteristics that are preferred by said purchaser*. Applicant asserts that none of the cited art, whether considered alone or in combination, teaches or suggests this feature of Applicant's claim.

Further in regard to claim 1, the cited art fails to teach or suggest *comparing terms of sale for sale offers located from said searching to said initial terms of sale and to said default standards and based on said comparing, presenting one of the sale offers located from said searching to the purchaser, wherein the presented sale offer includes said improved terms of sale and meets said default standards*.

The Examiner relies on the matching program of Lustig to teach this feature of Applicant's claim and asserts, "Lustig teaches the matching program, upon receiving the original offer, retrieves the available offer from the matching database and compares the available offer with the original offer to determine whether the better offer is available." (Office Action, March 02, 2010, Response to Arguments, p. 3) As described above, Lusting does not teach default standards for a purchaser, wherein said default standards specify product or service characteristics that are preferred by said purchaser, as recited by Applicant's claim. Accordingly, Lustig does not (and cannot) compare terms of sale for located sale offers to initial terms of sale **and** the default standards. As admitted by the Examiner, Lustig's matching program merely compares an available offer to the original offer. Lustig's matching program does not compare the original offer to any other standards of any sort, much less default standards as recited in Applicant's claim. Lustig evaluates an available offer **solely** on the comparison of details of the available offer to details of the original offer. (Lustig, paragraph [0078]) Furthermore, Lustig does not (and cannot) present a sale offer that includes said improved terms of sale **and** meets default standards. As described above, Lustig does not teach such default standards.

Moreover, Lustig's process to determine a better offer compares only the details between offers and does not compare available offers to any default standards of a purchaser. Therefore, Lustig has no way to determine whether a better offer meets the default standards of a purchaser. Applicant asserts that none of the cited art, whether considered alone or in combination, teaches or suggests this feature of Applicant's claim.

For at least the reasons above, the rejection of claim 1 is unsupported by the cited art and removal thereof is respectfully requested.

Independent claim 14 recites limitations similar to those discussed above regarding claim 1, and was rejected using similar reasoning. Therefore, the arguments presented above apply similarly to this claim.

In regard to claim 29, the Examiner has improperly grouped claim 29 with claim 1. The Examiner submits, "Claims 29-40 contain similar limitations found in claims 1-13 above, therefore, are rejected by the same rationale." (Office Action, March 02, 2010, p. 10) The Examiner's rejection of independent claim 29 under the same rationale as independent claim 1 is improper. Claim 29 includes claim language that is distinct from the claim language recited in claim 1. Specifically, claim 29 recites if said better price is found before said predetermined amount of time expires, purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between said particular price and said better price. Claim 1 does not recite any similar limitation. **Accordingly, a *prima facie* rejection of claim 29 has not been stated.**

Further in regard to claim 29, the cited art does not teach or suggest, *in response to determining that said better price is found before said predetermined amount of time expires, purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between said particular price and said better price*.

Note that Applicant's claim recites purchasing the item at the better price and charging the purchaser a **new** price between the particular price and the better price (the purchased price). Applicant's claim recites that the new price is between the particular price and the **purchased price**.

The Examiner submits that Lustig teaches, for example, an Offer 1 (original offer) with price 1, an Offer 2 with a better price than Offer 1, and an Offer 3 with a better price than Offer 2. (Office Action, March 02, 2010, p. 4) The Examiner further submits, "if the system accepts the Offer 2 as the better offer, the user will be charged the price between the price of the Offer 1 and the Offer 3 (better price)." (Office Action, March 02, 2010, p. 4) Applicant asserts that the Examiner has misinterpreted the language of Applicant's claim.

Applicant's claim recites charging the purchaser a **new** price that is **between the purchased price** and an **original price** (i.e., the particular price for an original purchase). The example from Lustig provided by the Examiner describes charging a user a price (Offer 2) that is between the price for **another offer** (Offer 3) and the original price (Offer 1). This is clearly different from Applicant's claim in which the purchaser is charged a price that is between the **purchased price** and the **original price**. In the Examiner's example, the Examiner submits that Lustig charges the user the Offer 2 price (i.e., the purchased price of the item), rather than charging the user a price that is between the Offer 2 price (purchased price) and the Offer 1 price (original price). Thus, *by the Examiner's own admission*, Lustig does **not** teach charging the purchaser in the manner recited by Applicant's claim.

Lustig simply does not teach charging a user a **new** price that is in any way **different** from the purchased price of an item. Lustig merely describes accepting an offer on behalf of a user (Lustig, paragraph [0079]) and is completely silent regarding any particular manner in which the user is charged, or how much the user is charged. Lustig does not disclose charging a user a **new** price that is **different** from the purchased price of an item, much less a **new** price that is between the **purchased price** for the item

and the **original price** for the item. Applicant asserts that none of the cited art, whether considered alone or in combination, teaches or suggests this feature of Applicant's claim.

For at least the reasons above, the rejection of claim 29 is unsupported by the cited art and removal thereof is respectfully requested.

Independent claims 41 and 44 recite limitations similar to those discussed above regarding claim 29, and were rejected using similar reasoning. Therefore, the arguments presented above apply similarly to this claim.

Further in regard to claim 41, the cited art does not teach or suggest *intercepting a message over the internet to delay said purchase for a predetermined amount of time, wherein the message includes information regarding the purchaser's commitment to purchase the item or service.*

The Examiner admits that Lustig and Seymour "do not disclose intercepting a message over the Internet, wherein the message includes commitment to purchase." (Office Action, March 02, 2010, p. 10) The Examiner asserts, "intercepting a message over the Internet, wherein the message includes commitment to purchase is well known in the art. Therefore, it would have been obvious … to modify Lustig's [system] in combining with Seymour … for the purpose of providing more efficiency and convenien[ce] in communication over the Internet." (Office Action, March 02, 2010, p. 10) **The Examiner's assertion that "intercepting a message over the Internet, wherein the message includes commitment to purchase is well known in the art" is a completely unfounded assertion and is merely the Examiner's opinion.**

The Examiner hasn't cited any prior art that supports the Examiner's contention that it is obvious to intercept a message over the Internet where the message includes commitment to purchase information. **M.P.E.P. 2144.03A clearly states, "It is never appropriate to rely solely on 'common knowledge' in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based."**

That is precisely the case here. The Examiner has merely stated that it is "well known in the art" to intercept a message over the Internet where the message includes commit to purchase information. The Examiner's assertion is the "principal evidence" upon which the rejection of Applicant's claim is based. **Since no actual evidence of record supports this assertion, a *prima facie* rejection has not been established.**

Additionally, the Examiner's rejection does not take into account the full and complete language of Applicant's claim. **The Examiner's rejection does not address the fact that claim 41 recites intercepting a message over the Internet *to delay the purchase for a predetermined amount of time*.** Lustig and Seymour, as admitted by the Examiner, do not mention anything regarding intercepting a message over the Internet to delay the purchase for a predetermined amount of time. The Examiner does not cite any prior art that teaches or suggests intercepting a message to delay a purchase for a predetermined amount of time. The Examiner's combination of cited art thus fails to teach or suggest all claim limitations. M.P.EP. §2143.03 clearly states that all claim limitations must be taught or suggested by the prior art to establish *prima facie* obviousness.

Applicant notes that the current Action does not provide any rebuttal of the above remarks.

For at least the reasons above, the rejection of claim 41 is unsupported by the cited art and removal thereof is respectfully requested.

Further in regard to claim 44, the cited art fails to teach or suggest *a plurality of broker-agent programs performing multiple searches in parallel for the better price*.

In the Response to Arguments section of the Action dated March 02, 2010 and the Final Action dated September 28, 2010, the Examiner states, "retrieving and comparing a plurality of available offers to determine the better offer is considered equivalent to performing multiple searches in parallel for better price", referring to Lustig's matching

programming organizing, storing and retrieving a plurality of offers from a matching database. Applicant strongly disagrees. Lustig, even if combined with Seymour, does not teach a plurality of broker-agent programs performing multiple searches in parallel for the better price. The Examiner even states that Lustig's matching program "organizes, stores, and retrieves a plurality of available offers *from a matching database*" (emphasis added). Thus, **as admitted by the Examiner**, Lustig teaches retrieving other offers from a database, not a plurality of broker-agent programs performing multiple searches in parallel. Offers may be obtained in order to fill a database in numerous ways. The Examiner's contention that retrieving a plurality of offers from a database is "equivalent to" performing multiple searches in parallel is simply incorrect and is clearly unsupported by the cited art.

Applicant notes that the current Action does not provide any rebuttal of the above remarks.

For at least the reasons above, the rejection of claim 44 is unsupported by the cited art and removal thereof is respectfully requested.

Applicant also asserts that numerous other ones of the dependent claims recite further distinctions over the cited art. Applicant respectfully traverses the rejection of these claims for at least the reasons given above in regard to the claims from which they depend. However, since the rejections have been shown to be unsupported for the independent claims, a further discussion of the dependent claims is not necessary at this time. Applicant reserves the right to present additional arguments.

CONCLUSION

Applicant submits the application is in condition for allowance, and notice to that effect is respectfully requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5596-00901/RCK.

Respectfully submitted,

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Date: July 2, 2010